KPNX Broadcasting Company, Inc. d/b/a KSD-AM Radio *and* St. Louis Local of the American Federation of Television and Radio Artists. Case 14-CA-15094

June 30, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS FANNING AND ZIMMERMAN

On March 25, 1982, Administrative Law Judge Irwin Kaplan issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

DECISION

STATEMENT OF THE CASE

IRWIN KAPLAN, Administrative Law Judge: This case was heard before me in St. Louis, Missouri, on October 27, 1981. The underlying unfair labor practice charges were filed by St. Louis Local of the American Federation of Television and Radio Artists (herein the Charging Party, AFTRA, or the Union) on June 18, 1981, which charges gave rise to a complaint and notice of hearing on August 3, 1981, and an amended complaint and notice of hearing on September 8, 1981.

The gravamen of the complaint is that since on or about June 16, 1981, KPNX Broadcasting Company, Inc. d/b/a KSD-AM Radio (herein Respondent or KSD-AM Radio) unlawfully withdrew recognition and failed and refused to bargain with AFTRA, the longtime exclusive collective-bargaining representative of certain of Respondent's employees comprising an appropriate unit and that said Respondent thereby violated Section 8(a)(5) and (1) of the National Labor Relations Act, as amended (herein the Act). It is further alleged that since on or about June 16, 1981, Respondent unilaterally granted raises to unit employees and has unilaterally revised the various insurance benefits it had provided said unit employees, thereby additionally violating Section 8(a)(5) and (1) of the Act. Still further, it is alleged that Respondent independently violated Section 8(a)(1) of the Act by interrogating an employee about his union sympathies on or about February 28, 1981, and again sometime in May 1981. The supervisory and/or agency status of William Coffey is also in dispute.

Respondent's answer and amended answer conceded *inter alia* jurisdictional facts and the supervisory and agency status of certain individuals but denied such status insofar as William Coffey is alleged to be a statutory supervisor and/or agent of said Respondent.

According to Respondent, it lawfully withdrew recognition from AFTRA because it had a good-faith belief on the basis of objective considerations that AFTRA no longer represented a majority of its employees in the contract unit. Thus, it was not obligated to bargain with AFTRA when it provided wage increases and made certain revisions in various insurance benefits for said unit employees. Further, Respondent denied that it unlawfully interrogated any employee or that it otherwise committed any unfair labor practices.

Upon the entire record,[1] including my observation of the demeanor of the witnesses, and after careful consideration of the post-trial briefs, I find as follows:

I. JURISDICTION

Respondent is a Missouri corporation engaged in the operation of a radio broadcasting station, pursuant to authority conferred by the Federal Communication Commission. It has maintained its principal offices and a commercial radio broadcasting station at 10155 Corporate Square, in St. Louis, Missouri. During the 12-month period ending June 30, 1981, a representative timeframe, Respondent has in connection with its aforenoted business operations derived gross revenues in excess of $100,000, of which revenues in excess of $5,000 were derived from the sale of broadcast time to advertisers and sponsors located outside the State of Missouri. It is admitted, and I find, that Respondent is now and has been at all times material herein an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is admitted, and I find, that the Charging Party (AFTRA) is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Sequence of Events*

Henry Norris has been employed as a disc jockey at Respondent's St. Louis radio station since March 5, 1981.[2] Immediately prior to Norris' employment with

[1] Subsequent to the close of the instant hearing, certain of Respondent's unit employees filed a motion to intervene, restating virtually the same contentions as Respondent. Noting the late date the aforenoted motion was filed; noting the absence therein of any legally sufficient basis to warrant intervention; and noting further that counsel for the General Counsel has filed a motion in opposition thereto, I hereby deny said motion to intervene.

[2] All dates hereinafter refer to 1981, unless otherwise indicated.

Respondent, he worked for Radio Station WHK in Cleveland, Ohio. In February Respondent had an opening, and then Program Director William Coffey (now operations manager) spoke with Norris about working for Respondent at its radio station in St. Louis. Although Coffey had never met Norris, he was familiar with his work and admired his ability from a time when he, Coffey, worked for another radio station in nearby Akron, Ohio, 30 miles from Cleveland. Coffey asked Norris to send him an audition tape and promised to strongly recommend him for the job. On Saturday, February 28, Norris' day off, he flew to St. Louis where he was picked up at the airport by then Operations Manager Walter Turner (now vice president of programming) and brought to the radio station where he was interviewed. According to Norris, Turner offered to pay him above scale so that he could take some of the thunder away from AFTRA when it came time for that Union to do its "song and dance" (negotiate a new contract).[3] Norris testified that Turner also asked him about his feelings concerning AFTRA and that he in turn responded that the Union was needed in some places and was not in others where he had worked. The interview was conducted in an office which at that time was shared by Turner and Coffey and, according to Norris, Turner's remarks about AFTRA were made in Coffey's presence. This is denied by both Turner and Coffey. Turner conceded that he told Norris that Respondent is an AFTRA station and that he would have to join the Union but denied asking him about his union sentiments. He also denied making any reference to stealing the Union's thunder and could not recall saying anything about upcoming negotiations.

Norris was offered a job in that first and only interview and he accepted and, while Respondent wanted him to begin as soon as possible, no date had been set. Norris, who at that time had suspicions that he was going to lose his job at Radio Station WHK in Cleveland, asked Respondent to hold up any announcement. Within a few days, Norris lost his job at the Cleveland Radio Station and on or about March 5 began working for Respondent.

In April, Norris was approached by then news announcer, Robert Fox (now news director) and asked to sign a petition to remove AFTRA as the bargaining agent. When Norris questioned Fox about the matter, the latter explained that he had to do this to get an election to decertify the Union. Norris told Fox that he wanted more time to think about it. Fox in turn stated that there was not any time because he wanted to take the petition to the National Labor Relations Board the next day and he already had enough signatures on the petition. Norris refused to sign the petition at that time. Fox, however, never filed that petition because of a misunderstanding on his part as to the 60-90-day open period before the termination of the contract when such filings are permitted by the NLRB. Later that month Norris and his fiancee accepted a dinner invitation from Coffey and during the course of the meal *inter alia* Coffey made reference to the petition.

According to Coffey, Norris had not been performing as well as management expected. As Coffey had strongly recommended Norris for the position, he "felt responsible" and the dinner afforded them an opportunity to discuss the situation in an informal setting. Nearly all of the dinner conversation involved Coffey's and Norris' experiences as announcers and they compared notes about people in the broadcasting field whom they knew mutually. As described by Coffey, it was a "just getting acquainted conversation." Coffey asserted that he wanted to give Norris some feeling of support, some friendship, and calm him down, so that he could perform in accordance with his reputation and potential. He knew that Norris had been fired from his job in Cleveland, and therefore may have been experiencing some anxiety in his present position, so that he attempted to assure Norris that Clark, the president and general manager of the station, was a fair individual and that he, Norris, had nothing to worry about. At some point near the end of the evening Coffey questioned Norris further whether there was anything at the station that was troubling him such as the petition. According to Coffey he told Norris that it did not make a difference whether he signed the petition or not but that the important thing is that staff members get the job done and that the station is successful.

Norris conceded that the conversation at dinner was mainly of a social nature. He also spoke of his anxieties in Cleveland, a pressure-filled job, where the staff announcers were all insecure about their continued employment at that station. Norris was uncertain how the subject of the petition came up, but near the end of the evening he told Coffey of the circumstances in which the petition was presented to him and that he still needed time to think about it. Coffey assertedly responded that he understood and suggested that he, Norris, go to Clark and tell him about not signing the petition. Norris does not recall whether Coffey told him that he did not care whether or not he signed the petition or words to that effect. The dinner lasted approximately 3 hours of which time a minute or two were devoted to the petition.[4]

On or about June 10, Fox approached Norris with a second petition to get rid of the Union. Fox testified that the language in the second petition was exactly the same as the one he had circulated in April. The petition he handed Norris stated as follows:

> WE THE UNDERSIGNED, EMPLOYEES OF KSD RADIO, NO LONGER WISH TO BE REPRESENTED BY THE AMERICAN FEDERATION OF RADIO AND TELEVISION ARTISTS BY PURPOSES OF COLLECTIVE BARGAINING. [G.C. Exh. 8.]

[3] The parties stipulated, the record supports, and I find that Respondent and AFTRA had long been parties to a bargaining relationship covering successive contracts in a unit described generally as all news employees, disc jockeys, and announcers employed at Respondent's radio station in St. Louis, Missouri. The unit is described more fully in agreements entitled "Talent Agreement" and "St. Louis Staff Newspersons and Newsperson's Agreement" (G.C. Exhs. 4 and 5).

[4] It is alleged that Coffey unlawfully interrogated Norris in violation of Sec. 8(a)(1) by asking Norris to speak to General Manager Clark about why he did not want to sign the petition. While Coffey acknowledged that he told Norris that Clark was someone who was accessible, he denied that he told Norris to tell Clark why he did not sign the petition.

The petition had already been signed by six of the nine-member unit.[5] Norris testified that he signed the petition because earlier in the day he was advised by Howard Demere, the weather announcer and union shop steward, that he should sign the petition for his own protection.

On June 16, Fox met with Clark in the latter's office, showed him the petition and told him that he was going to file it with the NLRB on the following day. According to Fox, Clark did not respond immediately. Later that same day Clark called Fox at his home and told him that he had discussed the petition with his attorney and had been advised that "because of the number . . . the majority of signatures that you have on there, its not necessary [to go to the NLRB] if you don't want to."

As noted previously, the contract terminated on June 14. The parties had already conducted one bargaining session, with a second scheduled to be held on June 18. Respondent canceled the scheduled meeting and broke off negotiations by telegram dated June 16 which reads as follows:

> A MAJORITY OF THE KSD EMPLOYEES YOUR UNION HAS PREVIOUSLY REPRESENTED HAVE PETITIONED ME IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY YOUR UNION.
>
> I'M ADVISED BY COUNSEL THAT IT WOULD BE ILLEGAL FOR ME TO CONTINUE TO BARGAIN WITH A MINORITY UNION. ACCORDINGLY, I MUST CANCEL THURSDAY'S MEETING. WALTER W CLARK PRES KSD RADIO [G.C. Exh. 6.]

The Union, by letter dated June 18, wrote Respondent advising it that it did not accept its unilateral decision to discontinue the collective-bargaining process. (G.C. Exh. 7.) No further negotiations were conducted. Respondent later granted raises to unit employees and implemented a revision relative to insurance benefits without bargaining with the Union. The General Counsel contends that Respondent, by withdrawing recognition and by subsequently making the aforenoted unilateral changes, violated Section 8(a)(5) of the Act.

B. *Discussion and Conclusions*

1. The 8(a)(1) allegations

It is alleged that on two occasions Respondent independently violated Section 8(a)(1) by unlawfully interrogating Norris. On the first occasion, as testified by Norris, Turner asked him at the employment interview about his feelings toward AFTRA. Norris testified that Turner conducted the interview in Coffey's presence in an office shared by both Turner and Coffey and that Turner offered to pay him (Norris) above union scale in order to "take some of their thunder when it comes time for them to do their song and dance [negotiate a new contract.]" According to Turner, he merely told Norris that Respondent was an AFTRA station, and that he would have to belong to the Union to work for the station. Turner does not recall making any other reference to the Union and specifically denied that he told Norris that he would be paid over scale in order to steal the Union's thunder. Coffey was on the air at the time Turner conducted most of the interview. He then joined them at the tail end of the interview and all three went to lunch together. Coffey did not recall Turner making any reference to AFTRA in his presence.

In the circumstances of this case, I find it highly unlikely that Turner made the disputed remarks ascribed to him by Norris. It is noted, for example, that all of Respondent's announcers are paid over scale. Significantly, the contract then in effect provided *inter alia* "that nothing in this Agreement shall be deemed to prevent any artist from negotiating for or obtaining better terms than the minimum terms provided herein." (G.C. Exh. 5, art. IV, sec. 1.) Norris was paid over scale by Radio Station WHK in Cleveland and conceded that in the broadcasting business "its very commonplace." In such circumstances, Turner would appear to have no need to offer to pay Norris above scale in an antiunion context. In crediting Turner's version over Norris' it is also noted that Turner is not otherwise alleged to have engaged in any unfair labor practices. In view of the foregoing and as I have otherwise found Norris less than forthright[6] and with due consideration to demeanor factors, I find that Turner did not interrogate Norris in violation of Section 8(a)(1) as alleged. Accordingly, I shall recommend that this allegation be dismissed.

The General Counsel also contends that Respondent violated Section 8(a)(1) when Coffey asked Norris (as testified by Norris) to speak to Respondent's general manager about why he did not want to sign a petition withdrawing support from AFTRA.[7] The interrogation

[5] William Coffey was one of the signatories and, as noted previously, his supervisory and/or agency status is in dispute.

[6] For example, Coffey testified (denied by Norris) that Norris requested that any announcement of his hiring be held in abeyance so that he could collect severance pay. However, when pressed further, Norris retreated from his earlier denial stating, "I don't recall . . . I had no way of knowing that that [his discharge] was going to happen." Elsewhere Norris testified that he expected to be fired and hoped to be terminated from his job in Cleveland. In assessing Norris' overall credibility, it is also noted that while he distinctly recalled that Turner made reference to "song and dance" when discussing with him the upcoming negotiations with AFTRA, no such reference is contained in his affidavit.

[7] As noted previously the supervisory and/or agency status of Coffey is in dispute. Coffey was hired in February 1981 as program director, and in that capacity he was charged with installing and overseeing a new country music format. In this connection he immediately began building a new music library and selected music which was to be played on the air. He also conducted "critique" sessions reviewing with disc jockeys their work on the air. While it is undisputed that the terms and conditions of the contract applied to Norris as program director, I find of greater significance in assessing supervisory status that he effectively recommended the hiring of employees. Thus, on one occasion in June he acknowledged to Demere (weather announcer) that he was thinking of hiring Christopher. Further, it is undisputed that Coffey strongly recommended Norris and was instrumental in his hiring. In short, the record supports, and I find, that Coffey was a statutory supervisor at all times material herein as alleged. With regard to the agency allegation, it is noted *inter alia* that Coffey shared an office with Operations Manager Turner, an admitted supervisor, and, at times, issued memos to the other announcers relative to scheduling and other terms and conditions of employment over his signature (See G.C. Exhs. 2 and 3(a) and (b).) While Coffey testified that he put out these memos on instructions from Turner, there is no showing that such was communicated to the subordinate announcers. In any event, given Coffey's accessibility to management, the

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ascribed to Coffey, and denied by him, was allegedly made at a dinner sometime in April on which occasion Coffey had invited Norris and his fiancee to attend. It is undisputed that Coffey and Norris spent most of the evening in "social conversation" and only as they were getting ready to call it a night was the subject of the petition mentioned. According to Norris, Coffey told him, "Go and talk to Wally [Clark] about why you didn't sign it [the petition]." As noted above, Coffey denied giving any such instructions to Norris relative to the petition although he conceded that he brought up the subject.

According to Coffey, Norris had not been performing as well as expected. He, Coffey, felt personally responsible as he had a great deal to do with hiring Norris. Coffey professed that he wanted Norris to feel comfortable and not be intimidated, given the fact that he had recently lost a job at another radio station. Norris admittedly discussed some of his anxieties that evening in the context of job security. Thus, according to Coffey, in an effort to alleviate Norris' apprehensions about his job at KSD-AM Radio, he told Norris that he knew about the petition and asked him if that was what was troubling him. Further, he assertedly made it clear to Norris that he did not care whether or not he signed the petition; only how well he performed on the air. Norris, on the other hand, could not recall (but did not deny) that Coffey told him that it was not important whether or not he signed the petition.

Given Coffey's major role in recruiting and then hiring Norris, his stated reasons for inviting Norris and his fiancee to dinner is understandable and his account of what transpired is plausible. Coffey testified without contradiction that he had taken to dinner on other occasions announcers Wilke and O'Connor, as they too, at one time, were having readjustment problems. Even by Norris' account, of the 3 hours that he spent with Coffey that evening, only a minute or two were devoted to the petition. It would appear that if Coffey were motivated by less than legitimate considerations he would have devoted more time to discussing the petition and/or the Union. Thus, it is noted that Coffey's reference to the petition was free of any threat of reprisal or promise of benefit. See, e.g., *Morse Electro Products Corp.*, 210 NLRB 1075, 1076 (1974). Under all these circumstances, and noting that Coffey is not otherwise charged with violating the Act, I am unpersuaded that he asked Norris to tell Clark why he did not sign the petition.[8] Accordingly, I shall recommend that this allegation be dismissed.

employees most likely would view his statements as emanating from management. See *Our-Way, Inc./Our-Way Machine Shop, Inc.*, 238 NLRB 209, 213 (1978). Under all the circumstances, I find additionally that Coffey was an agent within the meaning of the Act as alleged.

[8] As noted above, Norris' fiancee was in attendance at the dinner in question. The parties stipulated that she was also present and available to testify at the hearing. In these circumstances, without any further foundation having been made, and as she was equally available to both Respondent and the General Counsel and as I have relied on other factors noted above, including Coffey's and Norris' respective demeanor in crediting the former over the latter, I find it unnecessary to draw an adverse inference in the General Counsel's failure to call her as a witness or offer any explanation, as requested by Respondent. See *Wayne Construction, Inc.*, 259 NLRB 571, fn. 1 (1981).

2. The 8(a)(5) allegations

It is undisputed that Respondent and AFTRA have long been parties to a collective-bargaining relationship covering a series of collective-bargaining agreements, the last of which terminated on June 14, 1981. It has long been held that on the expiration of the most recently expired contract, the incumbent union is entitled to a presumption that it continues to be the exclusive majority representative for the unit employees.[9] The employer, however, may challenge or rebut that presumption upon the termination of a collective-bargaining agreement if it can demonstrate a reasonably grounded good-faith doubt on objective considerations that the union has lost its majority support.[10]

Counsel for the General Counsel contends that Respondent's good faith relative to withdrawing recognition should be viewed in the context of contemporaneous unfair labor practices and the circumstances surrounding the solicitation of the petition. The Board has long noted that employers cannot rely on expressions of employee disaffection to sustain a good-faith doubt of union majority status when their own misconduct gave rise to said disaffection.[11] For reasons discussed previously, I have already found that Respondent had not engaged in any independent unfair labor practices prior to its withdrawal of recognition. Insofar as the circumstances surrounding the solicitation of the petition, a discussion thereon is now in order.

The record disclosed that Robert Fox, a unit employee at all times material herein, met individually with other staff announcers (unit employees) once in April and again in June to solicit their signatures on petitions which stated unambiguously that the signers no longer wanted to be represented by AFTRA for purposes of collective bargaining. Some of them questioned Fox about the petition and he told them "its to get rid of the union, to decertify the union." When Fox later presented the petition to Norris, it already had four signatures, enough to support the filing of a decertification petition and therefore, he, Fox, tried to get Norris to make up his mind quickly. Fox explained to Norris that the petition was a prerequisite to an election to decertify the Union and that he, Fox, expected to file the petition with the National Labor Relations Board the following day. Norris refused to be pressured or rushed into signing the petition without further reflection and did not sign it at that time. Apparently the contract was then in its insulated 60-day period so that the filing of a petition with the NLRB would have been untimely. In any event a decer-

[9] *Erich R. Weber and Bernadine T. Weber, Co-Partners, Weber's Bakery*, 211 NLRB 1, 10 (1974); *Automated Business Systems, a Division of Litton Business Systems, Inc., a Subsidiary of Litton Industries, Inc.*, 205 NLRB 532, 534 (1973); *Terrell Machine Company*, 173 NLRB 1480, 1481 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970).

[10] See *Charles Manufacturing Company*, 245 NLRB 39, 42 (1979); *Creative Engineering, Inc.*, 228 NLRB 582 (1977); see also *United States Gypsum Company*, 157 NLRB 652 (1966), where an employer's RM petition was dismissed on the basis that it had not shown by objective considerations that it had a good-faith doubt that the union had lost its majority.

[11] *J.H. Paterson Company*, 217 NLRB 1030, 1040–41 (1975); *Hoyt Motor Company, Inc.*, 136 NLRB 1042, 1043 (1962).

tification petition was not filed at that time nor at any time subsequent thereto.

On June 10, Fox circulated a second petition which contained virtually the same unambiguous language as the earlier one. This time Norris elected to sign the petition. Earlier in the day shop steward Demere told Norris that he ought to sign the petition for his own protection. In all there were seven signatures in a unit comprising eight to nine individuals.[12] Fox told at least two or three of the employees at some unspecified point either with regard to the first petition or his most recent petition that he was soliciting in order to get an election to decertify the Union. Counsel for the General Counsel contends that the reference by Fox to an election in these circumstances so taints the petition that Respondent acted at its peril by relying thereon and therefore prematurely and unlawfully withdrew recognition from the Union. He analogized (as does Respondent) the circumstances surrounding the petition to the signing of union authorization cards. In doing so, the General Counsel cited *Cumberland Shoe Corporation*, 144 NLRB 1268 (1963), as noted by the Supreme Court in *N.L.R.B.* v. *Gissel Packing Co., Inc., et al.*, 395 U.S. 575, 584 (1969): "Under the *Cumberland Shoe* doctrine, if the card itself is unambiguous . . . it will be counted unless it is proved that the employee was told that the card was to be used *solely* for the purpose of obtaining an election."

Given the state of this record, the General Counsel's reliance on the *Cumberland Shoe* doctrine and its progeny is misplaced. Thus, it is noted that the General Counsel has not demonstrated that any of the signers were told that the petition was to be used "solely for the purpose of obtaining an election." Even if Fox's statement to Norris "This is what I have to do to get an election to decertify" is deemed to be tantamount to "solely for the purpose of obtaining an election," I am unpersuaded that Norris' signature was fraudulently obtained. It is undisputed that the petition in unambiguous terms signified that the signers no longer wanted AFTRA to represent them for collective-bargaining purposes. Further, Norris testified that he signed the petition at the urging of shop steward Demere. Moreover, Fox's representation about an election was made to Norris in April with regard to the first petition and not the critical second petition which served as the basis for Respondent's withdrawal of recognition from the Union. As testified by Norris, "I don't recall the exact words [used by Fox] because I had already been advised earlier in the day by Howard Demere . . . that I should sign it this time around, and that one would be for my own protection." In *Gissel*, the Court noted the Board's own warnings not to apply the *Cumberland Shoe* doctrine mechanically, quoting with approval the language in *Levi Strauss & Co.*, 172 NLRB 732, 733, fn. 7 (1968), where the Board stated as follows:

> It is not the use or nonuse of certain key or "magic" words that is controlling, but whether or not the totality of circumstances surrounding the card solicitation is such as to add up to an assurance to the card signer that his card will be used for no purpose other than to help get an election. [395 U.S. at fn. 27.]

If Norris' signature is discounted along with Coffey's (a low level supervisor) the petition sill contains five other signatures in a unit comprising eight employees, a clear majority. As to those signers, there is an absence of evidence tending to show that any of them were told that the purpose of the petition was solely to obtain an election or that their signatures were otherwise fraudulently obtained. It is not alleged nor does the record disclose that Fox was acting as an agent for Respondent or that Respondent inspired or was otherwise involved in soliciting signatures for the petition. In these circumstances, I find that the petition constituted viable *prima facie* manifestations of AFTRA's loss of majority support. See *American Express Reservations, Inc.*, 209 NLRB 1105, 1120 (1974). Given the viability of the petition, the case does not turn on whether in fact the Union represented a majority of Respondent's employees,[13] but rather where, as here, the "assertion of doubt is raised in a context free of unfair labor practices and is supported by a showing of objective considerations providing reasonable grounds for a belief that a majority of the employees no longer desire union representation." *Southern Wipers, Inc.*, 192 NLRB 816 (1971); *Charles Manufacturing Company, supra* at 42 (1979).[14] See also *Automated Business Systems, supra* at 535.

In the instant case, it is noted that the record is devoid of any evidence tending to show that Respondent had previously violated the Act although it had long been involved in collective bargaining with AFTRA. Thus, in June when it came time for the parties to negotiate a new contract, Respondent met with AFTRA for that purpose. While the contract then in effect terminated on June 14, the only reason the parties scheduled a date after the expiration of the contract was because of AFTRA's unavailability to meet earlier. Given the absence of any evidence tending to show Respondent's proclivity to violate the Act, I am unpersuaded, without more, that Respondent's reliance on a petition signed by a majority of the employees stating unambiguously that they no longer wanted AFTRA to represent them was grounded on bad faith or seized upon as a basis to avoid its bargaining obligations under the Act. Under all the foregoing circumstances, and the record as a whole, I find that Respondent withdrew recognition from the incumbent union on a good-faith belief based on objective considerations in a context free of unfair labor practices that it no longer continued to be the majority representative and that Respondent thereby did not violate Section

[12] One of the signatories was William Coffey. For reasons noted earlier, I have found that Coffey at all material times herein was a statutory supervisor. Thus, insofar as the petition relates to the unit, six of eight employees signed the document.

[13] The General Counsel relied solely on the presumption under the contract to establish proof of the Union's majority status.

[14] While in *Charles Manufacturing Company*, unlike the case at bar, an RM petition was filed, it does not appear that such filing is critical to a finding of good faith. Thus, in *Southern Wipers, Inc., supra*, the Board disagreed with the trial examiner who concluded that the respondent should have availed itself of the Board's processes if it wished to challenge the union's majority status.

8(a)(5) of the Act.[15] Accordingly, I shall dismiss this allegation.

As Respondent was no longer obligated to bargain with the Union at the time it unilaterally granted wage increases and altered employees' insurance benefits, *a fortiori*, I find that Respondent did not violate the Act by such conduct and shall additionally recommend that these allegations be dismissed.

CONCLUSIONS OF LAW

1. Respondent KPNX Broadcasting Company, Inc. d/b/a KSD-AM Radio, is now, and has been at all times herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. St. Louis Local of American Federation of Television and Radio Artists is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent did not, as alleged in the amended complaint, engage in conduct violative of Section 8(a)(5) and (1) of the Act.

4. Respondent did not, as alleged in the amended complaint, independently engage in conduct violative of Section 8(a)(1) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[16]

The complaint is hereby dismissed in its entirety.

[15] *Charles Manufacturing Company, supra; Southern Wipers, Inc., supra.* Cf. *Automated Business Systems, supra* at 537, where the respondent may have been deemed to have had a good-faith doubt as to the incumbent union's majority status, but by virtue of the serious unfair labor practices it committed, the Board ordered bargaining under Sec. 8(a)(1), finding it unnecessary to additionally make a finding of a violation of Sec. 8(a)(5).

[16] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.